

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lara Hidalgo	Team: Team # 5	CCRB Case #: 200816117	<input type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Thursday 11/06/2008 10:00 PM	18 Mo. SOL 05-06-2010	Location of Incident: § 87(2)(b)	Precinct: 33
Date/Time CV Reported Fri, 11/07/2008 12:58 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 11/07/2008 12:58 AM

Complainant/Victim	Type	Home Address
1. § 87(2)(b)	Comp/Victim	§ 87(2)(b)
2. § 87(2)(b)	Reporting Non-Witness	§ 87(2)(b)

Witness(es)	Home Address
1. § 87(2)(b)	§ 87(2)(b)
2. § 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Osvaldo Nunez	00000	918086	033 PCT
2. POM Jose Troncoso	15286	926225	033 PCT
3. POM Nelson Vergara	30448	927635	033 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nelson Batista	12074	931541	033 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Jose Troncoso	Abuse of Authority: PO Jose Troncoso entered § 87(2)(b) in Manhattan.	A . § 87(2)(g)
B . POM Nelson Vergara	Abuse of Authority: PO Nelson Vergara threatened to arrest § 87(2)(b)	B . § 87(2)(g)
C . LT Osvaldo Nunez	Abuse of Authority: LT Osvaldo Nunez supervised the entry and search of § 87(2)(b) § 87(2)(b) in Manhattan.	C . § 87(2)(g)
D . LT Osvaldo Nunez	Abuse of Authority: LT Osvaldo Nunez threatened to arrest § 87(2)(b)	D . § 87(2)(g)

### Synopsis

On November 6, 2008, at approximately 10:00pm, Officer Jose Troncoso and Officer Nelson Vergara responded to § 87(2)(b) of § 87(2)(b) in Manhattan, the residence of § 87(2)(b) in regards to a report of possible child neglect. Officer Troncoso and Officer Vergara asked to see § 87(2)(b) § 87(2)(b) -old grandson § 87(2)(b). Upon examining § 87(2)(b) who was partially-clothed and had a bruise on his arm, Officer Vergara and Officer Troncoso stated that they needed to enter § 87(2)(b) apartment, but he refused. Officer Troncoso placed his foot in the doorway, preventing him from closing the door (Allegation A). When § 87(2)(b) continued to refuse the officers' entry to his apartment, Officer Vergara threatened to arrest him (Allegation B). Officer Vergara and Officer Troncoso requested a supervisor to the scene, and Lieutenant Osvaldo Nunez arrived shortly thereafter with Officer Nelson Batista. After taking § 87(2)(b) to another floor for questioning, Lieutenant Nunez, followed by Officer Troncoso, Officer Vergara and Officer Batista, proceeded to enter and check § 87(2)(b) apartment to verify whether or not the environment was safe and suitable for a child (Allegation C). Lieutenant Nunez determined that no crime had been committed, and had Officer Vergara and Officer Troncoso fill out a Domestic Incident Report and notify the State Registry. § 87(2)(b) alleged that Lieutenant Nunez stated that he could be arrested for child endangerment for allowing § 87(2)(b) to go down to the street unaccompanied (Allegation D).

§ 87(2)(g)  
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§ 87(2)(g)

### Summary of Complaint

On November 7, 2008, § 87(2)(b) filed two complaints with the Civilian Complaint Review Board, the first via the Call Processing System and the second via telephone with his daughter, § 87(2)(b) (encl. 6a-c). The second complaint filed in connection with this incident was closed later the same day as a duplicate. On November 18, 2008, § 87(2)(b) provided a telephone statement (encl. 7a) and on November 24, 2008, § 87(2)(b) provided a verified statement (encl. 7b-h). § 87(2)(b) who primarily speaks Spanish, made all statements in his native tongue. § 87(2)(g)  
§ 87(2)(b) is a § 87(2)(b) -year old Hispanic male who works as § 87(2)(b). § 87(2)(b) assumes custody of his § 87(2)(b) -old grandson § 87(2)(b) when his daughter § 87(2)(b) is working. § 87(2)(b) was not present for this incident.

On Thursday, November 6, 2008, at 9:02 PM, Mr. § 87(2)(b) responded to a telephone call from his daughter § 87(2)(b) at his apartment located at § 87(2)(b) in Manhattan. § 87(2)(b) said that she was thinking of coming by his apartment soon, and § 87(2)(b) suggested that she pick up some food he had prepared earlier that evening. § 87(2)(b) requested that her § 87(2)(b) -year old son § 87(2)(b) who was spending the night with § 87(2)(b) meet her when she arrived to hand her the food. (§ 87(2)(b) stated that § 87(2)(b) was § 87(2)(b) -years-old; however, according to the *NYPD Domestic Incident Report* (encl. 9d-e), § 87(2)(b) was § 87(2)(b) old at the time of the incident.) When § 87(2)(b) got off the phone with her, he packed up the food in containers and told § 87(2)(b) to give his mother the food when she arrived. § 87(2)(b) then began to shower.

§ 87(2)(b) had been in the shower for about 45 seconds when he began to hear loud, persistent knocks on the door. When he exited the shower he heard § 87(2)(b) shouting from the hallway and opened the front door to find him outside crying. When § 87(2)(b) asked what was wrong, § 87(2)(b) revealed that he had accidentally locked himself out of the apartment when he handed the containers of food off to his

mother in front of the elevator door on the sixth floor. § 87(2)(b) then proceeded to shower, and about 25-30 minutes later, § 87(2)(b) began to take his shower.

At 9:37 PM, according to the clock on his kitchen wall, § 87(2)(b) heard loud knocks on his front door and opened it to find two uniformed police officers outside, identified through investigation as Officer Jose Troncoso and Officer Nelson Vergara. Officer Troncoso, described by § 87(2)(b) as a Hispanic male, 5'8"-5'10", 175-180 pounds, olive-skinned, short black hair, 25-30 years old, asked if there was a child in the apartment, and § 87(2)(b) replied that there was. Officer Troncoso asked if he could see the child. § 87(2)(b) said yes and closed the door, called § 87(2)(b) out of the shower and had him wrap up in a towel. Officer Vergara, described as a Hispanic male, 5'9"-5'11", 180 pounds, light-skinned, round face, stood directly behind Officer Troncoso.

§ 87(2)(b) opened the door with § 87(2)(b) standing in front of him. Officer Troncoso immediately put his left foot inside the apartment and stated that he needed to enter and search the apartment. § 87(2)(b) replied that the officers did not have the right to enter his apartment because he had not violated any laws, and added that he did not understand why they needed to enter. Officer Troncoso again stated that he needed to enter and search the apartment, and asked § 87(2)(b) what he was hiding. § 87(2)(b) asked Officer Troncoso why he was blocking the door with one foot inside, and Officer Vergara, who remained standing directly behind Officer Troncoso, said that they could do whatever they wanted. § 87(2)(b) contested that they needed to have a search warrant from the court in order to enter his apartment. Officer Vergara replied in a sarcastic manner that § 87(2)(b) believed himself to be a lawyer. § 87(2)(b) responded that he did not think himself to be a lawyer, but believed it was his right to refuse their access to his apartment unless they had a court order. He said that if they went to court and obtained a warrant, they could return and search as much as they would like. Officer Troncoso told § 87(2)(b) not to complicate things, and § 87(2)(b) asked what he meant by saying that he was complicating things. Officer Troncoso replied that they had to call the lieutenant. § 87(2)(b) said that they could call whomever they wanted, but he was not going to allow them to enter the apartment to search. Officer Vergara said that § 87(2)(b) could be arrested for assaulting a police officer as Officer Troncoso was in the center of the doorway and § 87(2)(b) was trying to close the door on him. § 87(2)(b) denied that he was in any way physically attempting to close the door, but desired for Officer Troncoso to remove himself from the doorway. One of the officers then called the lieutenant.

Lieutenant Osvaldo Nunez, identified by § 87(2)(b) by name observed on nameplate and described as a Hispanic male, 6'0", 200 pounds, medium-dark-skin, 30-35 years old, dressed in a white shirt uniform, arrived about ten minutes later, at approximately 9:55pm, with his operator, described by § 87(2)(b) as a Hispanic male, possibly Dominican, 175 pounds, 25-28 years old, short hair, oval face, no facial hair, identified through investigation as Officer Nelson Batista. Lieutenant Nunez and Officer Vergara moved to the side and whispered something to each other. Lieutenant Nunez told § 87(2)(b) that they could arrest him for something, and § 87(2)(b) contested that if they could arrest him, they should arrest him, but he had not broken any laws. Lieutenant Nunez then asked where the child was, and § 87(2)(b) called § 87(2)(b) out to the front door. Lieutenant Nunez took § 87(2)(b) to the fifth floor and questioned him for about 8-10 minutes.

When Lieutenant Nunez returned with § 87(2)(b) Lieutenant Nunez said that he needed to search the apartment. § 87(2)(b) said that he felt intimidated at that point and told them to do what they wanted. Lieutenant Nunez entered the apartment and searched first in the refrigerator. Officer Troncoso, Officer Vergara and Officer Batista followed him into the apartment. Lieutenant Nunez called § 87(2)(b) "lazy" for having allowed § 87(2)(b) to exit the apartment unaccompanied. Lieutenant Nunez proceeded to search the living room, two hallway closets, and inside the bedroom. § 87(2)(b) began to explain how § 87(2)(b) had locked himself out, and the Lieutenant Nunez responded by saying that he did not care what § 87(2)(b) was attempting to explain to him, what mattered was that § 87(2)(b) had let a seven-year old leave the apartment by himself. § 87(2)(b) denied that his grandson had actually exited the building. Meanwhile, Officer Vergara asked for § 87(2)(b) name and his daughter's name, which § 87(2)(b) provided. Lieutenant Nunez said that he could handcuff § 87(2)(b) and arrest him. At this point § 87(2)(b) calmed himself because he said that he did not want § 87(2)(b) to see him get arrested and handcuffed.

Lieutenant Nunez stepped outside for a couple minutes and when he returned told Officer Vergara to ask for § 87(2)(b) identification. He added that this was not the first time this kind of incident had occurred, and told Officer Vergara to make sure to get the right identification. Lieutenant Nunez then left the apartment without another word. § 87(2)(b) stated in the interview that the lieutenant was referring to a televised incident that occurred a couple years ago in which his grandson left the apartment in the middle of the night. § 87(2)(b) had since changed the locks in order to avoid the same situation repeating itself. Once Officer Vergara recorded § 87(2)(b) information, all three officers left the apartment.

§ 87(2)(b) stated that he received a letter from ACS a few days later, and surmised that one of the officers had reported him for something.

### **Results of Investigation**

#### **WITNESS STATEMENTS**

§ 87(2)(b)  
On December 1, 2008, § 87(2)(b) the wife of the superintendent for the apartment building located at § 87(2)(b) in Manhattan, provided a brief telephone statement about the incident (encl. 8a).

Sometime on the evening of November 6, 2008, § 87(2)(b) received a call from § 87(2)(b) unidentified next-door neighbor. § 87(2)(b) neighbor complained that a child had been crying for over half an hour but did not specify whether the shouts were coming from within the apartment or from the hallway. § 87(2)(b) dialed 911 on behalf of § 87(2)(b) neighbor, who preferred not to further involve herself and to remain anonymous.

When Officer Jose Troncoso and Officer Nelson Vergara arrived, § 87(2)(b) listened to their interaction with § 87(2)(b) from the stairway between the sixth and seventh floors. After they knocked and before § 87(2)(b) opened the door, she heard some sort of commotion coming from within the apartment, but did not know what it was.

When § 87(2)(b) opened the door, he explained to the officers why § 87(2)(b) had been shouting. He stated that he had been in the shower, did not know that § 87(2)(b) was locked out and had not heard anything. When Officer Vergara and Officer Troncoso asked to enter the apartment to see § 87(2)(b) § 87(2)(b) replied that he did not have to show them the child or allow them access to his apartment. According to § 87(2)(b) not until Lieutenant Nunez arrived did § 87(2)(b) comply with their request to speak with § 87(2)(b) at which point Lieutenant Nunez took § 87(2)(b) to the fifth floor and questioned him. § 87(2)(b) left the stairwell shortly after Lieutenant Nunez arrived.

#### **WITNESSES NOT INTERVIEWED**

§ 87(2)(b) unidentified next-door neighbor did not provide a statement because she did not wish to be contacted. Numerous attempts were made to speak with the unidentified neighbor by asking § 87(2)(b) the superintendent's wife, to obtain permission from the neighbor to release her telephone number to the agency or to leave a message asking her to call back. § 87(2)(b) neighbor did not respond.

## **POLICE OFFICER STATEMENTS**

### **Officer Nelson Vergara of the 33<sup>rd</sup> Precinct (subject officer)**

#### ***Memo Book***

Officer Vergara did have entries in his memo book regarding this incident (encl. 9a-c): 9:21pm, 10-child neglect at § 87(2)(b) 11:35pm, 93C/93Q – complaint report prepared/ child abuse, maltreatment or neglect report prepared.

#### ***NYPD Domestic Incident Report***

NYPD Domestic Incident Report for incident number 2008-033-002011 (encl. 9d-e), indicates that on November 6, 2008, at approximately 9:21pm, § 87(2)(b) was suspected of not providing adequate supervision for the victim, his § 87(2)(b) old grandson § 87(2)(b) at § 87(2)(b) § 87(2)(b) in Manhattan. No arrest was made because § 87(2)(b) did not commit any offense. Under “Results of Investigation and basis of action taken”, Officer Vergara provided the following narrative: § 87(2)(b) allowed his § 87(2)(b) old grandson § 87(2)(b) to exit the apartment and go down six flights of stairs to bring food to his mother, who was waiting outside the apartment building in her car. § 87(2)(b) stated that he was taking a shower and allowed § 87(2)(b) to go to § 87(2)(b) his mother. When § 87(2)(b) returned, he was crying and knocking at the front door for about fifteen minutes before § 87(2)(b) opened the door for him. The State Registry was notified and a report of suspected child abuse or maltreatment was prepared. § 87(2)(b) was not arrested based on the fact that the circumstances did not warrant his arrest. No firearms were found in § 87(2)(b) apartment. The Domestic Incident Report was reviewed by Officer Nikaulys Manon and approved by Sergeant Priscilla Caruana.

#### ***CCRB Interview***

Officer Nelson D. Vergara, a § 87(2)(b)-old Hispanic male who stands at 5’9” and weighs 180 pounds, was interviewed at the CCRB on January 16, 2009 (encl. 9f-g).

On November 6, 2008, Officer Vergara worked from 3:00pm until 11:35pm. Officer Vergara was assigned to patrol sector B with Officer Jose Troncoso. They were in marked vehicle number 2763. Officer Vergara was the recorder and was dressed in uniform.

Officer Nelson D. Vergara and Officer Jose Troncoso were patrolling sector B when they received a call over the radio for possible child neglect at § 87(2)(b) § 87(2)(b) in Manhattan. They were informed of a child on the 6<sup>th</sup> floor who had been yelling, crying and banging on the door for approximately fifteen minutes. When they arrived at the location and entered the front lobby, Officer Vergara spoke with § 87(2)(b) the superintendent’s wife, who placed the 911 call. She confirmed that a young child had been banging on the door for about fifteen minutes and crying, information she obtained from § 87(2)(b) next-door neighbor. Officer Vergara and Officer Troncoso ascended to the sixth floor and knocked on the neighbor’s door, who further confirmed that there had been a child and that she had notified § 87(2)(b) by telephone. Officer Vergara could not recall whether § 87(2)(b) neighbor provided any additional information regarding the incident, but he remarked that she did not want to further involve herself in the investigation.

When Officer Vergara knocked on the door of § 87(2)(b) § 87(2)(b) partially opened the door. Officer Vergara and Officer Troncoso told him why they were there and that they needed to see § 87(2)(b) § 87(2)(b) assumed an aggressive stance and asked repeatedly why they were there, why they needed to see § 87(2)(b) and who had placed the 911 call. He was very reluctant to provide any information whatsoever and persisted in his demands to know who had placed the 911 call.

About two to three minutes after § 87(2)(b) opened the door, § 87(2)(b) appeared behind him, half-clothed with a bath towel wrapped around his waist. Officer Vergara briefly observed the child and noticed a mark somewhere on his arm. § 87(2)(b) and § 87(2)(b) explained that the mark resulted from an incident at school. § 87(2)(b) asked them if they were satisfied and began to shut the door, but Officer Troncoso

placed his foot in the bottom of the doorframe to prohibit him from doing so. § 87(2)(b) tried repeatedly to close the door on Officer Troncoso. Officer Vergara admitted that he then threatened to arrest § 87(2)(b) for obstruction of government administration, as § 87(2)(b) was impeding the investigation by attempting to shut the door on Officer Troncoso's foot. Officer Troncoso suggested that they call the patrol supervisor, and either he or Officer Vergara put in the call for supervisory assistance. At some point during the period in which Officer Vergara and Officer Troncoso were waiting for the patrol supervisor, Lieutenant Nunez, to arrive, § 87(2)(b) authorized them to enter the apartment, but they said that they would wait for their supervisor.

When Lieutenant Osvaldo Nunez and his driver, identified through investigation as Officer Nelson Batista, arrived on the scene, Officer Vergara pulled Lieutenant Nunez to the side and explained the situation to him. Lieutenant Nunez spoke with § 87(2)(b) and took § 87(2)(b) to the stairwell between the fifth and sixth floors to interview him. Officer Vergara was not within hearing range of the interview.

After interviewing § 87(2)(b) grandson, Lieutenant Nunez authorized entry into the apartment with § 87(2)(b) consent. He checked inside the refrigerator, the conditions of the apartment and the child's hygiene and physical condition. Officer Vergara followed behind Lieutenant Nunez to ensure his safety, and also observed the apartment's general condition. Everything appeared normal.

Officer Vergara returned to the stationhouse, prepared a complaint report and notified the State Registry of the incident. He was later informed that § 87(2)(b) had allowed his grandchild to descend six flights of stairs by himself to give food to his mother who was waiting in the car outside. As he exited the apartment, the door locked itself and he did not have keys to reenter. At the time § 87(2)(b) was showering or about to shower and did not hear his grandchild's yells from outside.

#### **Officer Jose Troncoso of the 33<sup>rd</sup> Precinct (subject officer)**

##### ***Memo Book***

Officer Troncoso did have an entry in his memo book regarding this incident (encl. 10a-b):  
10:05pm, Lieutenant Nunez arrived.

##### ***CCRB Interview***

Officer Jose Troncoso, a § 87(2)(b)-year old Hispanic male who stands at 5'7" and weighs 170 pounds, was interviewed at the CCRB on January 16, 2009 (encl. 10c-d).

On November 6, 2008, Officer Troncoso worked from 3:00pm until 11:35pm. Officer Troncoso was patrolling in sector B with Officer Nelson D. Vergara. They were in marked vehicle number 2763. Officer Troncoso was the operator and dressed in uniform.

Officer Troncoso was patrolling in sector B with Officer Vergara when they received a radio call regarding a child neglect. When they arrived at the location, they were greeted in the lobby by an individual, the superintendent's wife, who stated that she had a conversation with an upstairs neighbor who had either seen or heard a child yelling outside her neighbor's door on the sixth floor. Officer Troncoso and Officer Vergara ascended to the sixth floor and knocked several times on the door of § 87(2)(b). Officer Troncoso did not recall speaking to anyone else prior to knocking on § 87(2)(b) door. Officer Troncoso heard the sounds of commotion emanating from behind the door but could not tell what was happening.

A few moments later, an elderly gentleman, identified as § 87(2)(b) opened the door less than a shoulder's width. To § 87(2)(b) side stood a young, partially-clothed child, but Officer Troncoso was not certain at the time whether this was the child they were looking for or if there were other children within the apartment. The child's identity was eventually confirmed upon their patrol supervisor's arrival, questioning of the child and entry and search of the apartment. Officer Troncoso and Officer Vergara told § 87(2)(b) that they were there to investigate a child being neglected. § 87(2)(b) demeanor was "belligerent" from the onset, as he repeatedly asked who had called in the complaint. Officer Troncoso told him that they could not provide this information and they needed to investigate the welfare of the child.

§ 87(2)(b) began to push the door closed and said that they could not enter the apartment. Officer Troncoso placed his foot by the doorframe to impede § 87(2)(b) from closing the door. § 87(2)(b) again asked who had made the phone call, began to insult people who he suspected of having placed the call and said that he was going to call his lawyer. Officer Troncoso and Officer Vergara mutually decided to call their patrol supervisor.

The remainder of Officer Troncoso's statement was entirely consistent with Officer Vergara's statement, with the exception that, in addition to notifying the State Registry, Officer Vergara and Officer Troncoso filed reports with both the City and with ACS.

### **Lieutenant Osvaldo Nunez of the 33<sup>rd</sup> Precinct (subject officer)**

#### ***Memo Book***

Lieutenant Osvaldo Nunez did have entries in his memo book regarding this incident (encl. 11a-c): 9:35pm, Officer Vergara and Officer Troncoso of sector C requested an additional unit, in this case the patrol supervisor, at § 87(2)(b) § 87(2)(b) 9:55pm, resumed patrol.

#### ***CCRB Interview***

Lieutenant Osvaldo Nunez, a § 87(2)(b)-old Hispanic male who stands at 6'1" and weighs 224 pounds, was interviewed at the CCRB on February 20, 2009 (encl. 11d-f).

On November 6, 2008, Lieutenant Osvaldo Nunez worked from 2:45pm until 11:30pm as the platoon commander and patrol supervisor. Officer Nelson Batista worked as Lieutenant Nunez's operator, in marked vehicle number 4718. Lieutenant Nunez was dressed in uniform.

Lieutenant Nunez received a call through communications notifying him that Officer Vergara and Officer Troncoso, who were assigned to sector C, had requested a supervisor's assistance at § 87(2)(b) § 87(2)(b) in Manhattan. Lieutenant Nunez did not receive any additional information pertaining to the incident until he arrived on the scene.

When Lieutenant Nunez arrived on the 6<sup>th</sup> floor of the apartment building located at § 87(2)(b) § 87(2)(b) he saw Officer Vergara and Officer Troncoso standing in front of the door of § 87(2)(b) Officer Troncoso with his foot blocking the door. Lieutenant Nunez was not sure how long they had been there, and when he arrived, their conversation ceased. § 87(2)(b) could be seen on the other side of the partly-closed front door and appeared upset. Lieutenant Nunez did not recall where § 87(2)(b) grandson § 87(2)(b) was at that point.

Lieutenant Nunez took Officer Vergara to the side, and Officer Vergara explained that § 87(2)(b) had been acting belligerent and uncooperative since they arrived, telling them that they could not enter or search his apartment and attempting to shut the door on them. Officer Vergara also told Lieutenant Nunez some information he had obtained from the superintendent of the building's wife, who said that § 87(2)(b) had allowed his grandson to go down 6 flights of stairs to bring a package to his mother who was waiting in the car below. When § 87(2)(b) grandson returned to the apartment, he had locked himself out and § 87(2)(b) was in the shower.

Lieutenant Nunez returned and spoke with § 87(2)(b) explaining to him why they were there and that they had to check inside his apartment to ensure that the conditions therein were suitable for a child to live. Lieutenant Nunez took § 87(2)(b) grandson § 87(2)(b) down one flight of stairs to question him. Lieutenant Nunez asked § 87(2)(b) about a bruise on his face, which § 87(2)(b) explained was the result of an incident at school. Lieutenant Nunez asked him if his grandfather ever hit him and § 87(2)(b) said no. Lieutenant Nunez asked him when the last time he ate was, to which he replied that he had eaten a couple hours ago. He also questioned § 87(2)(b) as to whether or not his grandfather routinely sent him outside unaccompanied, to which he replied no. When asked if he was alarmed by anything § 87(2)(b) said, Lieutenant Nunez replied no; there was nothing unusual, remarkable or alarming about any of § 87(2)(b) statements; however, because they had received a 911 call regarding a suspected child abuse, they could

not just walk away from the apartment without first ensuring that the child was well cared for and that the apartment was inhabitable for a child.

Lieutenant Nunez had Officer Vergara and Officer Troncoso enter § 87(2)(b) apartment and begin preparing the domestic incident report while he knocked on the neighbor's door and spoke with her. Lieutenant Nunez stated that he did not want § 87(2)(b) to know that he was speaking with the neighbor because she wished to remain anonymous. § 87(2)(b) neighbor told Lieutenant Nunez that there was always a lot of screaming coming from § 87(2)(b) apartment and that he generally had trouble taking care of § 87(2)(b). She said that § 87(2)(b) was the legal guardian of § 87(2)(b) and that his mother, § 87(2)(b) daughter, did not have custody of him. When Lieutenant Nunez asked the neighbor if she ever heard § 87(2)(b) screaming or crying from being hit by § 87(2)(b) she said no. She stated that she called the superintendent's wife because she heard § 87(2)(b) screaming and banging on the door for about 15-20 minutes. The superintendent's wife then called 911. § 87(2)(b) neighbor did not know why or how § 87(2)(b) got locked out of the apartment; she just heard him from inside her apartment.

After he finished questioning the neighbor, Lieutenant Nunez returned to § 87(2)(b) apartment and checked to make sure that it was clean and that there was food in the refrigerator. Lieutenant Nunez stated explicitly that he did not "search" § 87(2)(b) apartment; he only checked to make sure that the conditions were safe and suitable for a child. The only door he opened was the refrigerator door. When Lieutenant Nunez asked § 87(2)(b) why he sent § 87(2)(b) down six flights of stairs, § 87(2)(b) did not have a response for why; he merely said that he had to send § 87(2)(b) down with a packages. Lieutenant Nunez observed that § 87(2)(b) appeared to be in good physical condition for a grandfather and could have delivered the package to § 87(2)(b) mother himself. After Lieutenant Nunez finished checking § 87(2)(b) apartment, he told § 87(2)(b) that he would be well within his rights to arrest him for child endangerment, as he had sent a § 87(2)(b)-old outside unsupervised, but considering the totality of the circumstances, (that the child otherwise appeared to be well taken-care-of) he would dismiss the situation as a lapse in judgment and not arrest him. § 87(2)(b) appeared relieved and even shook Lieutenant Nunez's hand before he left.

Lieutenant Nunez, Officer Batista, Officer Vergara and Officer Troncoso returned to the stationhouse. Lieutenant Nunez had Officer Vergara and Officer Troncoso fill out a suspected child abuse form and notify the State Registry.

When asked specifically as to whether or not § 87(2)(b) ever authorized him or Officers Troncoso or Vergara to enter his apartment, Lieutenant Nunez stated that it was not necessary for § 87(2)(b) to authorize their entry, and had § 87(2)(b) prevented them from entering they would have had to do so by force. In the case that it becomes necessary to effect an emergency child removal, a supervisor must be present; however, an officer is permitted to enter an apartment or private residence without a warrant or the resident's authorization in the case of suspected child abuse or child neglect. When asked at what age a child could be left unsupervised outside, Lieutenant Nunez replied that, although there was legally no official age at which it became permissible, a § 87(2)(b)-old should definitely not be permitted to leave home unaccompanied.

## **POLICE OFFICERS NOT INTERVIEWED**

§ 87(2)(b) identified the subjects of his complaint as Officer Jose Troncoso, Officer Nelson Vergara and Lieutenant Osvaldo Nunez. Officer Nelson Batista, who arrived on the scene with Lieutenant Nunez, did not witness § 87(2)(b) initial interactions with Officer Troncoso and Officer Vergara, upon which the allegations pled against them are based. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)



## POLICE DOCUMENTS

### ***SPRINT #§ 87(2)(b)***

SPRINT #§ 87(2)(b) (encl. 12a) regarding possible child neglect at § 87(2)(b) in Manhattan was generated by a call at 9:20pm on November 6, 2008 from an anonymous female who reported that, at § 87(2)(b) on the sixth floor, a child had been crying for a half-hour. The female caller, who identified herself only as the superintendent for the building, stated that she had knocked on the door but no one answered. At 9:20pm, an ani-ali traced the anonymous female caller to an individual by the name of § 87(2)(b) at telephone number § 87(2)(b), address § 87(2)(b) basement. At 9:26pm, officers from sector 33B arrived at the scene, and at 9:36pm and 9:59pm, lieutenant number one of the 33<sup>rd</sup> Precinct picked up calls regarding the incident. At 10:08pm, officers from the 33<sup>rd</sup> Precinct sector B prepared a report.

### ***33<sup>rd</sup> Precinct Tour 3 Roll Call on November 6, 2008***

The tour 3 Roll Call for the 33<sup>rd</sup> Precinct on November 6, 2008 (encl. 13a-b), shows that Lieutenant Osvaldo Nunez, tax registry number 918086, worked as the platoon commander and patrol supervisor from 2:45pm until 11:30pm in vehicle number 4718. Officer Nelson Batista, tax registry number 931541, worked as Lieutenant Nunez's operator from 3:00pm until 11:35pm in marked vehicle number 4718. Officer Jose Troncoso, tax registry number 926225, and Officer Nelson Vergara, tax registry number 927635, worked from 3:00pm until 11:35pm in sector B1, in vehicle number 2763.

## CRIMINAL CONVICTION HISTORY

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## CIVILIAN CCRB HISTORIES

§ 87(2)(b) has filed two prior complaints with the CCRB (encl. 4a), § 87(2)(b)

## OFFICER CCRB HISTORIES

Officer Jose Troncoso has had no substantiated CCRB allegations in the course of his nine-year tenure with the New York City Police Department (encl. 3b).

Officer Nelson Vergara has had no substantiated CCRB allegations in the course of his eight-year tenure with the New York City Police Department (encl. 3a).

Lieutenant Osvaldo Nunez has not had any substantiated CCRB allegations that resulted in discipline (encl. 3c-e).

## Conclusions and Recommendations

### ***Officer Identification***

§ 87(2)(b) alleged that as he spoke with two uniformed male officers at the front door entrance to his § 87(2)(b) located at § 87(2)(b) in Manhattan, one of the officers, who he described as a Hispanic male, 5'8"-10", 175-180 pounds, olive-skinned, short black hair, 25-30 years old, put his foot in the doorway to prevent § 87(2)(b) from closing the door (Allegation A). Officer Jose Troncoso, who was identified from SPRINT number § 87(2)(b) and the 33<sup>rd</sup> Precinct tour 3 roll call on November 7, 2008, is a § 87(2)(b) old Hispanic male with black hair who stands at 5'7", weighs 170 pounds and was dressed in uniform at the time of the incident. Officer Troncoso affirmed that he placed his foot in the doorway to

prevent § 87(2)(b) from closing the door. This statement was corroborated by his partner that day, Officer Nelson Vergara. § 87(2)(g)

§ 87(2)(b) alleged that, as he continued to refuse the officers' entry to his apartment, Officer Troncoso's partner, who he described as a 5'9"-11" Hispanic male, 180 pounds, slightly larger build than Officer Troncoso, light-skinned, round face, threatened to arrest him for assaulting a police officer (Allegation B). Officer Nelson Vergara, who was identified from SPRINT number § 87(2)(b) and the 33<sup>rd</sup> Precinct tour 3 roll call on November 7, 2008, is a § 87(2)(b) old Hispanic male who stands at 5'9", weighs 180 pounds and was dressed in uniform at the time of the incident. Officer Vergara stated that he threatened to arrest § 87(2)(b) for obstruction of governmental administration, not for assaulting a police officer, as § 87(2)(b) was impeding an official police investigation by refusing the officers' entry to his apartment. § 87(2)(g)

§ 87(2)(b) alleged that an officer he identified by the name on his nameplate as "Nunez", responded to Officer Troncoso and Officer Vergara's call for a supervisor to the scene, supervised the entry and search of § 87(2)(b) apartment (Allegation C) and stated that he could arrest § 87(2)(b) (Allegation D). § 87(2)(b) described this officer as a Hispanic male, 6', 200 pounds, medium-dark-skinned, 30-35-years old and dressed in a white shirt uniform. Lieutenant Osvaldo Nunez, who was identified by name observed on nameplate, SPRINT number § 87(2)(b) and the 33<sup>rd</sup> Precinct tour 3 roll call on November 7, 2008, is a § 87(2)(b) year old Hispanic male who stands at 6'1", weighs 224 pounds and was dressed in uniform at the time of the incident. Lieutenant Nunez affirmed that he supervised the entry and search of § 87(2)(b) apartment and that he informed § 87(2)(b) that he would be well within his rights to arrest § 87(2)(b) for child endangerment, but considering the totality of the circumstances, he would dismiss the situation as a lapse in judgment and not arrest him. § 87(2)(g)

### ***Agreed Facts and Issues In Dispute***

All parties agree that Officer Troncoso and Officer Vergara responded to a call regarding possible child neglect in § 87(2)(b) at § 87(2)(b) in Manhattan, and that § 87(2)(b) the inhabitant of § 87(2)(b) at § 87(2)(b) and the custodian of his § 87(2)(b)-old grandson § 87(2)(b) refused the officers' entry to his apartment. All parties confirm that Officer Troncoso placed his foot in the doorway to prevent § 87(2)(b) from closing the door, and that Officer Vergara threatened to arrest § 87(2)(b)

All parties agree that Officer Troncoso and Officer Vergara called for their supervisor's assistance, and that Lieutenant Nunez responded to the call with his operator that day, Officer Batista. It is not disputed that Lieutenant Nunez supervised the entry of § 87(2)(b) apartment. It is not disputed that Lieutenant Nunez stated that he could arrest § 87(2)(b)

§ 87(2)(g)

### ***Assessment of Evidence***

In regards to Officer Troncoso's entrance of § 87(2)(b) apartment, all parties agree that Officer Troncoso placed his foot in the doorway to prevent § 87(2)(b) from closing the door. Officer Troncoso and Officer Vergara explained that, as the radio call they received was regarding possible child neglect, they could not leave the location without first verifying whether or not the possibly neglected child was safe and well-cared for.

In regards to Officer Vergara's threat to arrest § 87(2)(b), § 87(2)(b) stated that Officer Vergara threatened to arrest him for assaulting a police officer, whereas Officer Vergara stated that he threatened to arrest § 87(2)(b) for obstruction of governmental administration, as § 87(2)(b) was impeding an official police investigation into possible child neglect by refusing the officers' entry to his apartment. § 87(2)(b)

affirmed that he refused the officers' entry to his apartment because he had not violated any laws and did not believe that the officers had the right to enter without a search warrant.

In regards to Lieutenant Nunez's supervision of the entry and search of § 87(2)(b) apartment, Lieutenant Nunez stated that he, Officer Troncoso, Officer Vergara and Officer Batista entered § 87(2)(b) apartment and checked, not searched, to ensure that conditions were safe and suitable for a child. This statement was corroborated by both Officer Troncoso and Officer Vergara, who affirmed that Lieutenant Nunez checked inside § 87(2)(b) refrigerator for food and checked the overall sanitary conditions of the apartment to confirm that they were suitable for a child. Furthermore, § 87(2)(b) description of Lieutenant Nunez's "search" of his apartment supported the officers' statements.

In regards to Lieutenant's Nunez statement that § 87(2)(b) could be arrested, § 87(2)(b) stated that Lieutenant Nunez said that he could be arrested for something; he did not say what for. Lieutenant Nunez explained that he informed § 87(2)(b) that he would have been well within his rights to arrest him for child endangerment, but considering the totality of the circumstances, would dismiss the situation as a lapse in judgment and not arrest him. All parties agreed that § 87(2)(b) § 87(2)(b) -old grandson § 87(2)(b) § 87(2)(b) had left the apartment unsupervised and locked himself out. § 87(2)(b) § 87(2)(b) guardian, allowed him to leave the apartment unaccompanied § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Allegation A) Officer Jose Troncoso entered § 87(2)(b) in Manhattan.**

§ 87(2)(b) alleged that Officer Troncoso placed his foot in the front door entrance of his apartment, preventing him from closing the door. Officer Troncoso, Officer Vergara and Lieutenant Nunez corroborated that Officer Troncoso placed his foot in the front door entrance of § 87(2)(b) apartment to prevent him from closing the door. Under the *Emergency Doctrine* discussed in Kamins' *New York Search and Seizure* (encl. 1a-b), "a police officer can enter a premises without a warrant to protect individuals in distress, to assist victims of crimes that have just occurred, or to investigate suspicious signs of impending danger". In *People v. Mitchell* (encl. 1a-b), the Court established that the following criteria warrant the application of the *Emergency Doctrine*: "(1) the police must have reasonable grounds to believe that there is an emergency at hand, and that there is an immediate need for their assistance for the protection of life or property; (2) the search must not primarily be motivated by an intent to arrest and seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or property to be searched." § 87(2)(g)

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#### **Allegation B) Officer Nelson Vergara threatened to arrest § 87(2)(b)**

§ 87(2)(b) alleged that Officer Vergara threatened to arrest him after he refused the officers' entry to his apartment. § 87(2)(g)

§ 87(2)(g) Patrol Guide procedure 215-03 (encl. 2a-k) states that a uniformed member of the service may "arrest perpetrator, if present, for appropriate offense(s)" "if probable cause exists that a crime has been committed against a child by a family member".

§ 87(2)(g)

§ 87(2)(g)

**Allegation C) Lieutenant Osvaldo Nunez supervised the entry and search of § 87(2)(b) in Manhattan.**

§ 87(2)(b) alleged that on November 6, 2008 at approximately 10:00pm, officers entered and searched his apartment without the appropriate legal authority to do so. Officer Troncoso, Officer Vergara and Lieutenant Nunez confirmed that they entered § 87(2)(b) apartment and checked to make sure all criteria were met in terms of the apartment being safe and suitable for a child. Under the *Emergency Doctrine* described in Kamins' *New York Search and Seizure* (encl. 1a-b), "a police officer can enter a premises without a warrant to protect individuals in distress, to assist victims of crimes that have just occurred, or to investigate suspicious signs of impending danger". In *People v. Mitchell* (encl. 1a-b), the Court established that the following criteria warrant the application of the *Emergency Doctrine*: "(1) the police must have reasonable grounds to believe that there is an emergency at hand, and that there is an immediate need for their assistance for the protection of life or property; (2) the search must not primarily be motivated by an intent to arrest and seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or property to be searched." § 87(2)(g)

**Allegation D) Lieutenant Osvaldo Nunez threatened to arrest § 87(2)(b)**

§ 87(2)(b) further alleged that Lieutenant Nunez threatened to arrest him for something. Lieutenant Nunez corroborated the accounts of § 87(2)(b) behavior and stated that he informed § 87(2)(b) that he would have been within his rights to arrest him for child endangerment. Patrol Guide procedure 215-03 (encl. 2a-k) states that a uniformed member of the service may "arrest perpetrator, if present, for appropriate offense(s)" "if probable cause exists that a crime has been committed against a child by a family member". Patrol Guide procedure 215-03 defines a neglected child as one who is "less than 18 years of age whose physical, mental or emotional condition has been impaired or is in imminent danger or becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care". § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: